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Zarian Midgley & Johnson PLLC University Plaza, 960 Broadway Ave., Suite 250 Boise, ID 83706			EXAMINER LOCKETT, KIMBERLY R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBIN KAY DEVERICH

Appeal 2009-0765
Application 10/716,123
Technology Center 2800

Decided¹: February 27, 2009

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT,
and MARC S. HOFF, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claim 7. Claims 1-6 have been indicated as allowable by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic paper).

STATEMENT OF THE CASE

Appellant invented a system for teaching music for stringed instruments by using colored fingering numbers on a sheet music (Spec. 1). Claim 7, which is the only claim on appeal, reads as follows:

7. A system for instructing a student to play music on a stringed instrument having a fingerboard, the system comprising:

sheet music comprising a musical staff and musical notes with colored fingering numbers placed above the musical notes,

wherein the colored fingering numbers indicate the string on which the student should place a finger and indicate the hand position of the student's hand on the fingerboard and the finger that should be used.

The prior art relied upon by the Examiner in rejecting the claim on appeal is:

Kraft	US 1,009,671	Nov. 21, 1911
Rickey	US 3,554,074	Jan. 12, 1971

The Examiner rejected claim 7 under 35 U.S.C. § 103(a) based upon the teachings of Kraft and Rickey.

We make reference to the Brief (filed May 23, 2005) and the Answer (mailed Jul. 1, 2005) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant did not make in the Brief have not been considered and are deemed waived. *See* (37 C.F.R. § 41.37(c)(1)(vii)).

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claim under 35 U.S.C. § 103. The issue specifically turns on whether one of ordinary skill in the art would have combined the disclosures of Kraft and Rickey and, if so, whether the combination of the applied references teaches using color for displaying fingering numbers on a sheet music.

PRINCIPLES OF LAW

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-988 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991), and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

The Supreme Court has held that in evaluating the obviousness of combining elements, a court need not find specific teachings, but rather may consider “the background knowledge possessed by a person having ordinary skill in the art” and “the inferences and creative steps that a person of ordinary skill in the art would employ.” *See KSR*, 127 S. Ct. at 1740-41. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”

Leapfrog Enter., Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR*, 127 S. Ct. at 1739-40). “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims.” *KSR*, 127 S. Ct. at 1742.

ANALYSIS

Appellant does not dispute the teachings of Kraft with respect to the claimed fingering numbers placed near the musical notes. However, Appellant’s contentions focus on whether the combination of Kraft and Rickey discloses, teaches, or suggests using color in presenting the fingering numbers (Br. 4-6).

Appellant specifically contends that Rickey displays a relatively large amount of information by means of a complex, multisheet adjustable slide chart having distinct regions (Br. 6). Appellant argues that the information in Rickey’s system is color coded to aid the user in discriminating among the large amount of information (*id.*). The Examiner responds that Rickey is relied on only to show that colored fingering notes more clearly indicate the finger position to the user (Ans. 5). The Examiner asserts that the combination of the references was based on the teachings one of ordinary skill in the art would have derived from the references and was not based on bodily incorporation of Rickey’s color coded system in Kraft (*id.*).

We agree with the Examiner’s analysis of Rickey and find that the color is used for displaying fingering and notations in the graphic notation region to help with the student in moving from one region to the other

(Rickey, Abstract and col. 3, ll. 4-19). Rickey, while using color for identifying regions (col. 10, ll. 13-21), also displays the fingering indicia in color (col. 5, ll. 70 – col. 6, ll. 5).

Additionally, contrary to Appellant's argument (Br. 7) that the combination would not have been obvious to the skilled artisan since Rickey uses color for identifying regions, color is additionally used for fingering indicia. In that regard, as argued by the Examiner (Ans. 5), the teaching value of Rickey as a whole, would have suggested using color for better identifying fingering numbers in the sheet music of Kraft.

CONCLUSION

For all of the above discussed reasons, we find no error in the Examiner's position that the combination of the references would have suggested using color in the fingering numbers in Kraft. Because Appellant has failed to show error in the Examiner's position, we sustain the 35 U.S.C. § 103 rejection of claim 7.

DECISION

The decision of the Examiner rejecting claim 7 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a)(1)(iv).

AFFIRMED

gvw

ZARIAN MIDGLEY & JOHNSON PLLC
UNIVERSITY PLAZA
960 BROADWAY AVENUE
SUITE 250
BOISE, ID 83706